IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.427 OF 2007

Kalyani Rajasimman
W/o.C.D. Rajasimman .. Petitioner

Vs.

1. The Secretary to Government,
   Prohibition & Excise Department,
   Secretariat,
   Chennai 600 009.

2. The District Collector & District
   Magistrate,
   Nagapattinam District,
   Nagapattinam. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus to call for the records relating to the detention order dated 6.3.2007 made in detention order C.O.C.No.05 of 2007 passed by the second respondent herein quash the same and direct the respondents to produce the body of the detenu Thiru.CDR @ Rajasimman who has been detained in Central Prison at Trichuriapali before this Court and set him at liberty.

For Petitioner : Mr.R. Sankarasubbu for
Mr.T.P. Senthil Kumar

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

O R D E R

P.K. MISRA, J

Wife of the detenu has filed this Habeas Corpus Petition for quashing the order of detention dated 6.3.2007 passed by the District Magistrate and District Collector, Nagapattinam, which has been passed on the allegation that the detenu is a Goonda and it is necessary to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The detenu came to the adverse notice of the police in Kariyapattinam Police Station Cr.No.30 of 2003 registered under Sections 147, 148, 427 and 506(ii) IPC, Kariapattinam Police Station Cr.No.181 of 2003, registered under Sections 147, 148, 341, 342, 324 & 307 IPC, Vedaranyam Police Station Cr.No.402 of 2005, registered under Sections 147, 148, 341, 323, 324 & 307 IPC r/w.3(1) of TNPPD Act and Kariyapattinam Police Station Cr.No.46 of 2007, registered under Sections 147, 148, 324 & 307 IPC r/w.3(1) of TNPPD Act. First two adverse cases are pending trial and the later two are pending investigation on the date when the order of detention was passed.

3. The ground case on which the order of detention was passed is dated 16.2.2007. Complaint was lodged by one Vasantha, wife of Thiyagarajan. It is narrated therein that her husband had earlier been assaulted by the detenu and his brother in connection with which Kariyapattinam Police Station Cr.No.181 of 2003 under Sections 147, 148, 341, 324 and 307 IPC had already been registered and trial was pending. It further appears that such complainant's husband had contested in the Panchayat election, but the detenu became successful and he is the Panchayat President. On 16.2.2007, the detenu along with others came in a car armed with deadly weapons and subsequently they trespassed into the house of the informant and her husband and caused damages to the doors, windows, cycle, car, etc. The detenu and two others took the husband of the complainant to the backyard and the detenu inflicted multiple cuts in the neck of her husband resulting in fall of neck of her husband. Others also inflicted cut injuries and her husband died in the spot with bleeding injuries. On the basis of such complaint, Kariyapattinam Police Station Cr.No.47 of 2007 had been registered. Investigation to such crime was going on. The detenu surrendered before the Judicial Magistrate on 19.2.2007 and was remanded to judicial custody till 5.3.2007. On the requisition from the Inspector of Police, the accused was remanded to police custody for two days. Subsequently, the accused gave a confessional statement which was recorded by the Inspector on 23.2.2007 at 5.30 P.M. On the basis of such basic materials, the order of detention has been passed on 6.3.2007.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. In the grounds of detention, the detaining authority has indicated that the detenu had filed Cr.M.P.No. 2437/2007 which was dismissed on 23.2.2007. It has been further indicated that bail application numbered as Cr.M.P.No.1646/2007 was pending before the Nagapattinam District Sessions Judge. It is further stated :

> "... However, there is real possibility of his coming out on bail by filing another bail application before the High Court or the Supreme Court for the above case, since in similar cases, bail orders are granted by the High Court or the Supreme Court after lapse of time."

The detaining authority concluded that with a view to prevent the detenu from indulging in further activities prejudicial to the maintenance of public order, it was necessary to pass the order of detention.

5. Learned counsel for the petitioner has contended that there has been undue delay in disposal of the representation and the subsequent communication thereof.

From the chart produced by the learned Addl. Public Prosecutor it appears that representation dated 12.3.2007 was received on 15.3.2007 and remarks were called for on 16.3.2007 and were received on 2.4.2007. Subsequently, the Minister rejected such representation on 5.4.2007 and the rejection letter was prepared on 9.4.2007 and sent to the detenu on 10.4.2007. Though prima facie it appear as if there was some delay between the date on which remarks were called for and the date on which remarks were received, it is apparent that such remarks were called for by post and subsequently in the Collectorate after receiving the remarks from the sponsoring authority such report was sent to the Government by post and sometime has been taken through the process of communication by post. Apart from this, there appears to be no other delay at any stage. Though it may appear as if rejection letter was prepared on 9.4.2007, after a gap of about 4 days, it appears that 6th, 7th and 8th April, 2007 were holidays and therefore it cannot be said that there was any delay in preparing the rejection letter. This contention regarding delay, therefore, is not acceptable.

6. Learned counsel for the petitioner has further contended that the alleged incident on the basis of which ground case has been registered and the detention order has been passed had occurred on the backyard of the informant and therefore it cannot be said that there has been possibility of public order being affected and it should be concluded that it is a case of mere law and order.

7. As per Section 2(1)(a)(iii) "acting in any manner prejudicial to the maintenance of public order" means – in the case of a goonda, when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

adversely, the maintenance of public order.

8. Whether public order is likely to be affected or mere law and order, is a matter which depends not only on the place of occurrence but also on several other factors such as setting the background and the impact which it may have on the even tempo of life.

9. The occurrence took place in a small village and the manner in which the occurrence has taken place is very likely to disturb the even tempo of life and, therefore, it can be said to be infringement of public order rather than infringement of mere law and order. The subjective satisfaction of the detaining authority on this aspect cannot be said to be arbitrary requiring any interference.

10. The other contention of the petitioner is to the effect that in the representation dated 12.3.2007 the petitioner had asked for copies of remand extension order and the remand extension requisition petition in Kariyapattinam Police Station Cr.No.46 of 2007, but the copies were not supplied. In answer to the contention raised to the above effect in para 26 of the affidavit, in the counter affidavit it has been stated that since those documents were not relied upon, copies of such documents were not supplied to the petitioner or the detenu.

11. From the grounds of detention it is apparent that the detaining authority came to the conclusion that detenu was a Goonda by relying upon four adverse cases including the case registered in Cr.No.46 of 2007. It is the specific contention of the petitioner that the detenu had surrendered before the Magistrate in connection with the said Cr.No.46 of 2007 as well as ground case Cr.No.47 of 2007. In such a situation it cannot be said that the documents sought for on behalf of the detenu were on the face wholly irrelevant warranting rejection of the representation for supply of such documents. In this context, it has to be remembered that one of the main contentions raised in the present Habeas Corpus Petition is to the effect that the detenu had been remanded in both the cases and the detaining authority without being aware of the fact that the detenu was remanded also in connection with Cr.No.46 of 2007, has passed the order of detention. According to the petitioner, this would also indicate that the detaining authority never made any real efforts to find out as to what had happened in Cr.No.46/2007, particularly when the occurrence had taken on the very same day. Even assuming that the detaining authority had not specifically relied upon such documents, since the alleged implication of the detenu in such adverse case was the subject matter of the detention order, when copies were sought for, efforts should have been made to supply the copies or to find out at least whether copies were in existence or not. Therefore, there has been non-application of mind at that stage and also there has been mechanical rejection of the representation requesting for copy of such documents.

12. It is next contended by the counsel for the petitioner that since a bail application has been filed and was pending before the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Sessions Judge, conclusion of the detaining authority to the following effect "However, there is real possibility of his coming out on bail by filing another bail application before the High Court or the Supreme Court for the above case, since in similar cases, bail orders are granted by the High Court or the Supreme Court after lapse of time." itself reflects non-application of mind on the part of the detaining authority. He submitted that since bail application was pending and yet to be considered, there is no question of filing another bail application and it seems the detention order has been mechanically passed without applying mind to the relevant aspects. In support of such contention, learned counsel has placed reliance upon a decision of this Court reported in 2005 TLNJ Crl.304 (V. SELVAM v. THE DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, THIRUVANNAMALAI DISTRICT AND ANOTHER). In the said decision, after noticing the fact that bail application had been filed, the detaining authority concluded :

> "I am also aware that there is an imminent possibility of his coming out on bail by filing another application for the above case before the same Court or Higher court ..."

In the above background, the Division Bench observed:-

> "5. As rightly contended by the learned counsel for the petitioner, when a bail application in Crl.M.P.No.2687 of 2005 on the file of Sessions Judge, Tiruvannamalai, was still pending till 10.5.2005, there is no necessity for the detenu to file another bail application before the same Court or the higher Court. Therefore, the impugned order of detention disclosing the non-application of mind by the detaining authority is apparent on the face of record.
>
> 6. The above view of ours is also supported by the earlier orders of this Court dated 21.7.1999 rendered in P.K. MADHAVA REDDIAR Vs. STATE OF TAMIL NADU, rep. by the Secretary to Government, Prohibition & Excise Department, Chennai-9 (H.C.P.No.1709/98), and dated 9.11.1999 rendered in Oorkkavalan Vs. State of Tamil Nadu, rep. by Secretary to Government, Prohibition & Excise Department, Chennai-9 (H.C.P.No.801/99)."

13. The recitals in the grounds of detention may be inartistic expression and one can discern that what the detaining authority intended is that in case pending bail application is rejected, there is possibility of detenu coming out on bail by filing bail application in the High Court or even in the Supreme Court. Merely because there has been some inartistic expression, prima facie it cannot be inferred that there has been non-application of mind. However, since the order of detention is liable to be quashed on the other ground, it is not necessary to delve further into this question.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. For the aforesaid reasons, the order of detention is quashed and the detenu shall be released forthwith unless his presence is required in any other case.

dpk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Prohibition & Excise Department,
   Secretariat,
   Chennai 600 009.

2. The District Collector & District
   Magistrate,
   Nagapattinam District,
   Nagapattinam.

3. The Public Prosecutor,
   High Court, Madras.

4. The Superintendent, Central Prison,
   Trichirapalli.

5. The Joint Secretary to Government,
   Public (Law & Order) Fort Saint George,
   Chennai-9.

+1 cc to Mr.T.P.Senthil Kumar, Advocate Sr.No.52204.

VRK(CO)
dcp/23.8

HCP.NO.427/2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/